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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1254/2018 & CM APPL. 42892/2018**

RAKESH BHADORIA

..... Petitioner

Through: Mr. Atul Parmar & Ms. Kirti Parmar,
Advocates.

versus

RAJBIR (DECEASED) THR LRS

..... Respondent

Through

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **12.10.2018**

CM APPL.42893/2018 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 1254/2018 & CM APPL. 42892/2018

Vide the present petition, the petitioner assails the impugned order dated 23.05.2018 of the learned Trial Court of the ADJ-03, North West, Rohini in CS No. 577061/16 whereby an application under Order VII Rule 11 of the CPC filed by the petitioner herein as defendant to the said suit was declined, it having been rightly observed vide the impugned order to the effect that only the averments made in the plaint were relevant and that the defence of the defendant could not be looked into at the present stage.

Taking into account the factum that the said suit that had been filed by the respondent to the present petition as plaintiff thereof of CS No.577061/16 for declaration, specific performance, mesne profits and permanent injunction in which the plaintiff thereof has stated their personal negotiations and claim for consideration money of the tune of Rs.7,00,000/- paid on 20.01.2010 of which Rs. 5,00,000/- was paid through a cheque no.707079 dated 20.01.2010 drawn on the State Bank of Patiala, Karara Branch, Delhi to the defendant and that there were also a chain of documents executed in relation thereto, i.e. a General Power of Attorney, will, receipt, agreement to sell and subsequently on execution of the documents, the defendant to the said suit i.e. the petitioner herein sought that the premises be also let out to him on a monthly rent at the rate of Rs.2,000/- excluding electricity charges which was so rented out but subsequently the plaintiff learnt that the defendant i.e. the present petitioner was selling the suit property and thus the plaintiff i.e. the respondent herein called upon the defendant of the suit i.e. the petitioner herein to make the payment of all the arrears of the rent and also to vacate the suit property, the defendant i.e. the petitioner herein kept postponing the payment of the same and also did not vacate the premises and in the meantime, the plaintiff of the said suit i.e. the respondent herein was served with the summons of the suit filed by the defendant against the plaintiff i.e. filed by the present petitioner against the plaintiff which was the suit for permanent mandatory injunction, vide which suit the petitioner herein claimed against the respondent of the present petition arrayed

as the plaintiff of the suit in which the impugned order under Order VII Rule 11 of the CPC has been pronounced, seeking to the effect that the decree of mandatory injunction be granted in favour of the petitioner herein as plaintiff of the said suit and against the respondent herein as the defendant of the said suit directing him to return, hand over the original title documents along with the previous additional documents related to property bearing no.F-92, Vardhman Enclave, Karara, Delhi-81 to the plaintiff thereof i.e. the present petitioner herein.

A bare perusal thus of the averments made in the plaint in which the impugned order has been made, makes it apparent that the disposal thereof cannot be made without the adjudication on trial.

The present petition CM(M)1254/2018 and accompanying application CM APPL. 42892/2018 are declined.

ANU MALHOTRA, J

OCTOBER 12, 2018/NC